

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	

**REPLY COMMENTS IN OPPOSITION TO COMMENTS TO LAST MILE  
BROADBAND LLC'S REQUEST FOR WAIVER**

Pursuant to the Federal Communications Commission's ("Commission" or "FCC") Public Notice in this proceeding,<sup>1</sup> Last Mile Broadband LLC ("Last Mile" or the "Company"), by and through its undersigned counsel, do hereby respectfully submit these Reply Comments in opposition to Comments to filed against its Request for Waiver.

Summarily, most of the commenters that oppose the Company's Request for Waiver do so for one of the following reasons: (1) unfairness to those provisional awardees that did not seek a request for waiver and met the filing requirements; (2) preservation of the integrity of the FCC's procedures in this proceeding; and (3) *bona fides* of companies seeking waiver request to construct and provide rural broadband service to consumers.

However, the Commission's own Order recognized that waiver of its requirements would be necessary. Indeed, the Commission designated an entire section on waiver requests in this regard and set forth additional measures for enforcement.<sup>2</sup> Specifically, the Commission stated:

*In the event a recipient is unable to meet the terms and conditions of the rural broadband experiments due to circumstances beyond its control (e.g., a severe weather event), that entity may petition for a waiver of the relevant terms and conditions prior to*

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<sup>1</sup> Wireline Competition Bureau Announces Availability of Additional Funding for Rural Broadband Experiments; Seeks Comment on Waiver Petitions of Provisionally Selected Bidders, WC Docket No. 10-90, DA 14-1889 (Dec. 23, 2014) ("December 23 Public Notice").

<sup>2</sup> Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8800, at ¶ 95 (2014) ("Rural Broadband Experiments Order").

*the relevant build-out milestone pursuant to section 1.3 of the Commission's rules. . . . We encourage entities that submit petitions for waiver to continue to work diligently towards meeting the terms and conditions of their experiments while their petitions are pending. If the petitioning entity is unable to meet the terms and conditions during the relevant cure period, and no decision has been issued on the waiver petition, the Bureau will issue a letter finding default, USAC will draw on the LOC, and the Enforcement Bureau may initiate forfeiture proceedings.*<sup>3</sup>

The purpose of the financial and technical requirements at this early stage is to ensure the *bona fides* of the provisional auction winners, and Last Mile is not opposed to such requirements. As many commenters stated, the Company was fully aware of the requirements before participating in the auction. However, the Company should not be penalized for not being in corporate existence a full three years in order to meet the financial qualifications. This fact is beyond its control.

Last Mile will not comment on the rationale of other requestors for waiver, however, it demonstrated that its circumstance is unique in that it has a public-private partnership with Prince George's County, Maryland that will provide the Company access to additional funding, infrastructure and other intangible resources that will cost other provisional auction winners hundreds of thousands (even millions) of dollars.<sup>4</sup> This partnership cannot be underestimated in terms of financial resources, tangible and intangible assets, and as such should be taken into consideration as the Commission deliberates the Company's request for waiver.

Last Mile is not looking to the FCC to be a venture capital firm to take a chance on it as a start-up business.<sup>5</sup> Rather, Last Mile agrees with the comments of the American Cable Association, which stated "the Commission should balance the requirement with the value derived from having smaller providers participate in the program."<sup>6</sup>

The Commission also noted that a diversity of project was an essential goal in this proceeding: "[w]e encourage participation in the Rural Broadband Experiment from a wide range of entities – including CLECs, electric utilities; fixed and mobile providers, WISPs, state

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<sup>3</sup> *Id.*

<sup>4</sup> See Last Mile Broadband LLC Expression of Interest and Letter of Support prepared by Prince George's County filed in *Rural Broadband Experiments Order*, March 7, 2014.

<sup>5</sup> See Comments of Midwest Energy Cooperative at 2.

<sup>6</sup> See Comments of American Cable Association at 2.

and regional authorities, Tribal governments and partnership.”<sup>7</sup> Indeed the Commission limited the funding amounts to ensure such diversity.<sup>8</sup> Moreover, the Commission expressed excitement over the number of expression of interest filed by a wide range of entities proposing service over diverse technologies as well as the number applicants that participated in the auction for CAF funding, citing that bidders included a diverse group of entities, including competitive providers, electric utilities, wireless Internet service providers and others.<sup>9</sup> Last Mile is exemplary of the type of new entrants into the telecommunications industry that the FCC is seeking.

It should be noted that the commenters who either already met the financial and technical requirements or filed comments opposing the waiver requests of the provisional auction winners are well-established utility cooperatives or trade associations with very established and financially-entrenched providers. It appears easy to criticize a small business for its nascent start yet very few major carriers, CLECs, or cooperatives are stepping up to build out this high costs and very high costs areas. Because these businesses are more concerned about profits, and not service, they dare not take up the challenge that Last Mile and other start-ups are undertaking. The principals of Last Mile live in and near the unserved and underserved areas provisionally awarded. They see this project as a service opportunity to meet the needs of their neighbors, which is why the public-private partnership is a critical component that should be considered as part of its financial qualifications.

As stated in its Request for Waiver, Last Mile believes that the initial construction and operating costs for its project ranges between \$2-4M. The provisional amount awarded to the Company is but a fraction of the total cost necessary to build out and support the very high cost communities in its Service Area. The so-called risk that some commenters describe the FCC’s approval of the Company’s waiver request<sup>10</sup> pales in comparison to the greater finances needed to provide service in these underserved and unserved areas so consumers, including Lifeline

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<sup>7</sup> Rural Broadband Experiment Order, 29 FCC Rcd at 8778, ¶21 (2014).

<sup>8</sup> Id at 8780, ¶ 26.

<sup>9</sup> See *FCC Launches Rural Broadband Expansion Experiments* WC Docket Nos. 10-90, 14-58, News Release, (FCC rel.. July 11, 2014). See also *Rural Broadband Experiments Draws Interest from Almost 200 Applicants*, WC Docket Nos. 10-90, 14-58, News Release, (FCC rel. Nov. 12, 2014).

<sup>10</sup> See comments of Skybeam LLC at 2.

eligible households, can enjoy the benefits of reasonably comparable service at reasonably comparable rates.<sup>11</sup>

As to its request for additional time to provide a P.E.-certified network design, that request is now moot as Last Mile is submitting concomitantly with the instant filing an updated FCC Form 5620 of its network design. This design is the same document previously filed,<sup>12</sup> but has been certified by Richard Biby, P.E.

### **Conclusion**

Based on the foregoing, Last Mile believes that waiver of the post-auction requirement to provide three years of audited financial statement is warranted due to the Company's nascent corporate history and because it will obtain valuable financial, tangible and intangible resources and assets from its public partner. The request also is in the public interest to ensure that unserved, underserved and rural areas of the County and the state of Maryland obtain the technological advance that broadband can bring. The Commission's remaining enforcement arsenal is sufficient to protect the public trust and interest in taxpayers' funding of the Rural Broadband Experiment.

Therefore, Last Mile Broadband LLC respectfully requests grant of its Request for Waiver.

Respectfully submitted,

A handwritten signature in blue ink that reads "Tamara Davis Brown". The signature is fluid and cursive, with the first name "Tamara" being the most prominent.

Tamara Davis Brown

Counsel for Last Mile Broadband LLC

January 13, 2015

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<sup>11</sup> See Comments of American Cable Association at 3.

<sup>12</sup> Last Mile has more than a track record of mere success in network construction. *Id.* Its principals have previously managed telecommunications installations or counseled telecommunications clients in all manner of regulatory compliance, including E-rate and Lifeline services. It has the technical knowledge and expertise to operate its broadband company.